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EXAMINER				
ROSEN, ELIZABETH H				
ART UNIT		PAPER NUMBER		
3692				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

deptopatent@hhlaw.com

### Office Action Summary

**Application No.**

10/808,611

**Applicant(s)**

DICKERSON, WENDELL

**Examiner**

ELIZABETH ROSEN

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.5,8-10,14,17-19,23,25,26,29-32,35-38,41-44 and 47-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.5,8-10,14,17-19,23,25,26,29-32,35-38,41-44 and 47-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the application filed on December 20, 2007.
2. Claims 1, 8, 10, 17, 19, 29, 30, 32, 35, 36, 38, 41-44, and 47-51 have been amended.
3. Claims 6, 7, 15, 16, 22, and 24 have been canceled.
4. Claims 1, 5, 8-10, 14, 17-19, 23, 25, 26, 29-32, 35-38, 41-44, and 47-51 are currently pending and have been examined.

### ***Previous Claim Objections***

5. In light of Applicant's amendments to the claims, the Objections are withdrawn.

### ***Previous Claim Rejections - 35 USC § 112***

6. In light of Applicant's amendments to the claims, the Rejections are withdrawn.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
8. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

9. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
10. **Claims 1, 5, 8-10, 14, 17-19, 23, 25, 26, 29-32, 35-38, 41-44, and 47-51 are provisionally rejected** on the ground of nonstatutory double patenting over claims 1, 5, 8-10, 14, 17-19, 23, 25, 26, 28, and 29 of copending Application No. 10/402,224. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.
11. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: fixed rate gradually stepped payment loan.
12. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.
13. Examiner acknowledges Applicant's request that the rejection be held in abeyance.

### ***Response to Arguments***

14. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.
15. Examiner would like to point out that the Supreme Court in *KSR* described seven rationales to support rejections under 35 U.S.C. 103:
- Combining prior art elements according to known methods to yield predictable results;
  - Simple substitution of one known element for another to obtain predictable results;
  - Use of known technique to improve similar devices (methods, or products) in the same way;
  - Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
  - "Obvious to try" –choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

- Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; and
  - Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.
16. It would be obvious to combine features of different types of mortgages because there would be predictable results. For example, it would be predictable that lower fixed payments during the beginning of the loan term, as in a hybrid loan, would result in higher payments during the later part of the loan term, but more affordability to borrowers.
17. Furthermore, it would be obvious to substitute features of different types of loans. For example, it would be obvious to substitute certain features of a graduated payment mortgage with features of a fixed payment mortgage or a hybrid mortgage.
18. Moreover, it would be obvious to try to combine the features of the existing mortgages. There are a limited number of mortgage features that have been altered in many different ways. It would be obvious to try to combine the different features to come up with a mortgage product.
19. In light of Applicant's amendments to the claims and the new ground of rejection, Applicant's arguments are moot.

### ***Claim Rejections - 35 USC § 112***

20. The following is a quotation of the first paragraph of 35 U.S.C. 112:
- The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
21. **Claim 1, 10, 19, 30, 47, and 49** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
22. **Claims 1, 10, 19, and 47** were amended to add the limitation of "*wherein the loan term is of thirty or more years.*" This limitation appears to be new matter because the specification does not discuss a loan term of more than thirty years.

23. **Claims 30 and 49** include the limitation of "*wherein the subsequent payments further comprise one or more prespecified secondary adjustments to the growth rate.*" The limitation of "*prespecified*" is new matter because it lacks support in the specification.
24. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
25. **Claims 30 and 49** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
26. **Claims 30 and 49** include the limitation of "*wherein the subsequent payments further comprise one or more prespecified secondary adjustments to the growth rate.*" It is unclear what is meant by "*prespecified secondary adjustments to the growth rate.*" Does this mean that the adjusted growth rate is predetermined (i.e., the number is already known)? Does this mean that the method of calculating the growth rate is predetermined? Because this limitation is not described in the specification, it cannot be construed.

### ***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. **Claims 1, 10, 19, 26, 43, and 47** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohn**, May 1976 in view of **Lovell**, 1981, and further in view of **Applicant's Admission** (Dickerson, U.S. Patent Application Publication Number 2004/0254879 A1).

#### **Claims 1 and 10:**

**Cohn** discloses the limitations of:

- *selecting a principal to be borrowed* (see at least Page 404, Paragraph 1 ( $M_0$  is the initial amount borrowed) and Page 409, Equation 3 ( $M_0$ ));

- *defining an interest rate* (see at least Page 409, Paragraph 5 (single interest rate) and Page 409, Equation 3 ( $R_1$ ));
- *defining an interest rate charged for the principal* (see at least Page 409, Paragraph 5 (single interest rate) and Page 409, Equation 3 ( $R_1$ ));
- *selecting a loan term* (see at least Page 409, Paragraph 5 (life of the mortgage) and Page 409, Equation 3 ( $T$ ));
- *selecting a term* (see at least Page 409, Paragraph 5 (life of the mortgage) and Page 409, Equation 3 ( $T$ ));
- *selecting an initial payment* (see at least Page 409, Paragraph 5 (a nominal payment is specified) and Page 409, Equation 3 ( $Q_1$ ));
- *calculating a growth rate* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_Q$ , over the life of the mortgage));
- *whereby a stream of payments, as defined by the initial payment, the loan term, and the growth rate* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_Q$ , over the life of the mortgage) and Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ . To determine the payments, the variables that are needed are as follows: (1)  $R_1$ , which is interest rate; (2)  $g_Q$ , which is the growth rate; (3)  $M_0$ , which is the principal; and (4)  $T$ , which is the loan term.)); and
- *whereby a stream of payments for the lending instrument, as defined by the initial payment, the loan term, and the growth rate* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_Q$ , over the life of the mortgage) and Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ . To determine the payments, the variables that are needed are as follows: (1)  $R_1$ , which is interest rate; (2)  $g_Q$ , which is the growth rate; (3)  $M_0$ , which is the principal; and (4)  $T$ , which is the loan term.)); and

Cohn does not disclose, but Lovell, however, does disclose:

- *has a present value equal to the borrowed principal* (see at least Page 288, Footnote 4 (The amount borrowed,  $P$ , is equal to the sum of the future mortgage payments, discounted at the interest rate)); and
- *wherein the present value is calculated using the interest rate* (see at least Page 288, Footnote 4 ( $P$  is the principal, which is equal to the present value. To determine  $P$ , the interest rate must be known.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of determining the present value and setting it equal to the principal with Cohn's mortgage. One of ordinary skill in the art would have

been motivated to incorporate this feature for the purpose of determining the required payments for paying off the principal of a mortgage (see at least Lovell, Page 288, Footnote 4).

**Cohn** does not disclose, but **Applicant** admits:

- *wherein the growth rate is less than two percent* (see at least Dickerson, Paragraph 0015 (the growth rate can be 2%)); and
- *wherein the loan term is of thirty or more years* (see at least Dickerson, Paragraphs 0014 and 0015 (A 30-year GPM is discussed.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art method of using a growth rate of 2% and term of 30 years with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of determining a growth rate, which is necessary for graduated payments (see at least Cohn, Page 409, Equation 3). Furthermore, applicant admitted, with regard to the prior art, that the growth rate can be 2% and never said that it cannot be lower than 2%. Moreover, if one solves Equation 3 from Page 409 of Cohn for the growth rate, it is clear that the growth rate can be less than 2%. In terms of the second limitation of a loan term of thirty or more years, it would be obvious that the mortgage term could be thirty years. It has been very common to have longer loan terms so that the borrower has lower payments and can afford the loan.

**Claim 19:**

**Cohn** discloses the limitations of:

- *a stream of payments* (see at least Page 409, Paragraph 5 ("stream of real payments"));
- *the stream of payments having a predefined initial payment and subsequent payments comprised of the initial payment modified by a predefined growth rate* (see at least Page 409, Paragraph 5 (a nominal payment is specified) and Page 409, Equation 3 ( $Q_i$  is the initial payment. Payments,  $Q_i$ , depend on the growth rate,  $g_Q$ )); and

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the growth rate is calculated so the stream of payments has a present value equal to a borrowed principal* (see at least Page 288, Footnote 4 (The

amount borrowed,  $P$ , is equal to the sum of the future mortgage payments, discounted at the interest rate)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of determining the present value and setting it equal to the principal with Cohn's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of determining the required payments for paying off the principal of a mortgage (see at least Lovell, Page 288, Footnote 4).

**Cohn** does not disclose, but **Applicant** admits:

- *wherein the growth rate is less than two percent* (see at least Dickerson, Paragraph 0015 (the growth rate can be 2%)); and
- *wherein the loan term is of thirty or more years* (see at least Dickerson, Paragraphs 0014 and 0015 (A 30-year GPM is discussed.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art method of using a growth rate of 2% and term of 30 years with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of determining a growth rate, which is necessary for graduated payments (see at least Cohn, Page 409, Equation 3). Furthermore, applicant admitted, with regard to the prior art, that the growth rate can be 2% and never said that it cannot be lower than 2%. Moreover, if one solves Equation 3 from Page 409 of Cohn for the growth rate, it is clear that the growth rate can be less than 2%. In terms of the second limitation of a loan term of thirty or more years, it would be obvious that the mortgage term could be thirty years. It has been very common to have longer loan terms so that the borrower has lower payments and can afford the loan.

**Claim 26:**

**Cohn** does not disclose, but **Applicant**, however, admits:

- *wherein the stream of payments comprises a plurality of fixed payments* (see at least Figure 3, Item 31a (Prior Art) (For a portion of the loan term, the payments are fixed.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art mortgage with a plurality of fixed payments with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been

motivated to incorporate this feature for the purpose of increasing payments until borrower can afford the higher fixed payments. Furthermore, there are many ways and it is common to modify and combine mortgages (see at least Lovell, Page 285, Paragraph 4).

**Claim 43:**

**Cohn** further discloses:

- *a lump sum payment at the end of the loan term* (see at least Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ , which could be the payment at the end of the term.)); and
- *the lump sum payment equal to an outstanding balance reflecting the difference between the stream of the payments and a needed stream of payments that achieves the present value* (see at least Page 409, Equation 3 (This equation could be used to solve for any remaining variables, such as the lump sum payment at the end of the loan term.)).

**Claim 47:**

**Cohn** discloses the limitations of:

- *a first code segment that is configured to receive a principal to be borrowed, an interest rate charged for the principal, a term, and an initial payment* (see at least Page 404, Paragraph 1 ( $M_0$  is the initial amount borrowed); Page 409, Paragraph 5 (single interest rate, life of the mortgage, nominal payment); and Page 409, Equation 3 ( $M_0$ ,  $R_1$ ,  $T$ ,  $Q_1$ )); and
- *a second code segment that is configured to calculate a stream of payments for the lending instrument, as defined by the initial payment...the stream of the payments* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_0$ , over the life of the mortgage) and Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ . To determine the payments, the variables that are needed are as follows: (1)  $R_1$ , which is interest rate; (2)  $g_0$ , which is the growth rate; (3)  $M_0$ , which is the principal; and (4)  $T$ , which is the loan term.)).

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *having a present value equal to the borrowed principal, the present value calculated using the interest rate* (see at least Page 288, Footnote 4 (The amount borrowed,  $P$ , is equal to the sum of the future mortgage payments, discounted at the interest rate)).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of determining the present value and setting it equal to the principal with Cohn's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of determining the required payments for paying off the principal of a mortgage (see at least Lovell, Page 288, Footnote 4).

**Cohn** does not disclose, but **Applicant**, however, admits:

- *a loan term of thirty or more years* (see at least Dickerson, Paragraphs 0014 and 0015 (A 30-year GPM is discussed.)).
- *a growth rate of less than two percent* (see at least Dickerson, Paragraph 0015 (the growth rate can be 2%)); and

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art method of using a growth rate of 2% and term of 30 years with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of determining a growth rate, which is necessary for graduated payments (see at least Cohn, Page 409, Equation 3). Furthermore, applicant admitted, with regard to the prior art, that the growth rate can be 2% and never said that it cannot be lower than 2%. Moreover, if one solves Equation 3 from Page 409 of Cohn for the growth rate, it is clear that the growth rate can be less than 2%. In terms of the second limitation of a loan term of thirty or more years, it would be obvious that the mortgage term could be thirty years. It has been very common to have longer loan terms so that the borrower has lower payments and can afford the loan.

29. **Claims 5, 14, and 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohn**, May 1976 in view of **Lovell**, 1981, and further in view of **Applicant's Admission** (Dickerson, U.S. Patent Application Publication Number 2004/0254879 A1), and further in view of **Sloane**, 1978.

**Claims 5, 14, and 23:**

**Cohn** does not disclose, but **Sloane**, however, does disclose:

- Payments are equivalent to interest costs (see at least Paragraph 6 (early payments are equivalent to the interest costs)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Sloane's mortgage that has an initial payment that is equivalent to interest with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of paying the interest so that it isn't added to the principal.

Cohn does not disclose, but **Applicant**, however, admits:

- GPM payments can be *greater than or equal to an interest portion of a fixed rate conventional loan having constant payments and the interest rate, principal, and term* (see at least Paragraph 0016 of Background of the Invention ("The GPM payment amounts 31 *may* be even lower than the interest only portion P of the conventional payment amount 11." Therefore, it is possible that the GPM payments are the same or higher than the interest only portion of a conventional loan.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art that GPM payments can be the same or greater than the interest only portion of a conventional loan with Cohn/Lovell/Admission/Sloane's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of combining preexisting types of mortgages to develop a modified type of mortgage (see at least Lovell, Page 285, Paragraph 4).

30. **Claims 8, 9, 17, 18, and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohn**, May 1976 in view of **Lovell**, 1981, and further in view of **Applicant's Admission** (Dickerson, U.S. Patent Application Publication Number 2004/0254879 A1), and further in view of **Kelly et al.**, U.S. Patent Application Publication Number 2001/0056397 A1.

**Claim 8:**

Cohn does not disclose, but **Applicant**, however, admits:

- *wherein a portion of the stream of the payments is less than the interest due on the principal* (see at least Figure 1 (Prior Art) (Item 11 shows the total monthly payment. p, represents the interest portion that is due. In the early years of the loan, the interest portion is larger than the principal portion of the payments.

Furthermore, as long as there is any interest due, then there can be a portion of the payments that is less than that interest due.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art that a portion of the payments can be less than the interest due with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of paying a significant portion of the interest so that it is not added to the principal.

**Cohn** does not disclose, but **Kelly**, however, does disclose:

- *selecting a buydown amount* (see at least Paragraph 0035 (borrower can choose a buydown)); and
- *wherein the stream of payments is further defined by the buydown* (see at least Paragraph 0035 (buydown is used to calculated the payment)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kelly's buydown with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of lowering the interest rate (see at least Kelly, Paragraph 0035).

#### **Claims 9 and 18:**

**Cohn** does not disclose, but **Kelly**, however, does disclose:

- *wherein the buydown amount is included as an increase to the selected principal* (see at least Paragraph 0035 (borrower can choose a buydown, which will be added to the current principal balance)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kelly's buydown with Cohn/Lovell/Admission/Kelly's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of increasing the size of the loan (see at least Kelly, Paragraph 0035).

#### **Claim 17:**

**Cohn** does not disclose, but **Applicant**, however, admits:

- *wherein a portion of the stream of payments is less than the interest due on the principal for the portion of the stream of payments* (see at least Figure 1 (Prior Art) (Item 11 shows the total monthly payment. pr represents the interest portion that is due. In the early years of the loan, the interest portion is larger than the principal portion of the payments. Furthermore, as long as there is any interest

due, then there can be a portion of the payments that is less than that interest due.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Applicant's admitted prior art that a portion of the payments can be less than the interest due with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of paying a significant portion of the interest so that it is not added to the principal.

**Cohn** does not disclose, but **Kelly**, however, does disclose:

- *wherein the method used to form the lending instrument further comprises selecting a buydown amount* (see at least Paragraph 0035 (borrower can choose a buydown));
- *wherein the stream of payments is further defined by the buydown* (see at least Paragraph 0035 (buydown is used to calculate the payment)); and
- *wherein said buydown reflects an unpaid interest amount from said portion of the stream of payments* (see at least Paragraph 0035 (borrower can buydown by paying unpaid interest)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kelly's buydown with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of lowering the interest rate (see at least Kelly, Paragraph 0035).

**Claim 25:**

**Cohn** does not disclose, but **Kelly**, however, does disclose:

- *a buydown that is included as an increase in the principal or a decrease in the initial payment* (see at least Paragraph 0035 (borrower can choose a buydown, which will be added to the current principal balance)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kelly's buydown with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of increasing the size of the loan (see at least Kelly, Paragraph 0035).

31. **Claims 29-32, 35-38, 41, 42, 44, 48-51** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohn**, May 1976 in view of **Lovell**, 1981, and further in view of **Applicant's Admission** (Dickerson, U.S. Patent Application Publication Number 2004/0254879 A1), and further in view of **Kistner**, 2000.

**Claims 29, 35, and 41:**

**Cohn** further discloses:

- *wherein the stream of the payments is defined by...subsequent payments comprising the initial payment adjusted by the growth rate at prespecified intervals during the loan term* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_0$ , over the life of the mortgage) and Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ . To determine the payments, the variables that are needed are as follows: (1)  $R_1$ , which is interest rate; (2)  $g_0$ , which is the growth rate; (3)  $M_0$ , which is the principal; and (4)  $T$ , which is the loan term.)); and

**Cohn** does not disclose, but **Kistner**, however, does disclose:

- *constant payments equal to the initial payment for a prespecified period of time* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year.)); and
- *wherein the prespecified period of constant payments is longer than the period between any two payments adjusted by the growth rate and is longer than one year* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kistner's hybrid mortgage with Cohn/Lovell/Admission's. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of combining mortgages in such a way as to allow the borrower to better afford the loan by having a fixed payment loan for the first five years with lower and more affordable payments. Many loans offer borrowers lower payments in the beginning of the loan term and higher payments after five or ten years because there is an expectation that the homeowner will have a higher salary in several years and will be able to afford higher payments.

**Claims 30, 36, and 42:**

**Cohn** further discloses:

- *selecting a growth rate* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_Q$ , over the life of the mortgage)).

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the subsequent payments further comprise one or more prespecified secondary adjustments to the growth rate* (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of adjusting the growth rate with changes in inflation with Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of having the payments grow at the same rate as inflation to eliminate risk so that the lender does not lose money and the borrower does not overpay and can afford the payments (see at least Lovell, pages 289-290).

**Claims 31 and 37:**

**Cohn** further discloses:

- *wherein the secondary adjustment comprises a lump sum payment at the end of the loan term, the lump sum payment equal to an outstanding balance of the principal* (see at least Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ , which could be the payment at the end of the term. This equation could be used to solve for any remaining variables, such as the lump sum payment at the end of the loan term.)).

**Claims 32, 38, and 44:**

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the secondary adjustment comprises a second stream of...payments that fully amortizes an outstanding principal balance* (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)); and

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of adjusting the growth rate with

Cohn/Lovell/Admission's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of adjusting the growth rate and requiring a second set of payments that can be used to pay the balance of the principal. It is possible that the previous set of payments based on the previous growth rate were insufficient to pay off the principal. Furthermore, it is possible that a second stream of payments at the adjusted growth rate could be used to pay the principal in a shorter amount of time than the previously set term of the mortgage. (see at least Lovell, pages 289-290).

**Cohn** does not disclose, but **Kistner**, however, does disclose:

- a *second stream of constant payments* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year, so each year has 12 constant payments.));

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate Kistner's hybrid mortgage with Cohn/Lovell/Admission's. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of combining mortgages in such a way as to allow the borrower to better afford the loan by having a fixed payment loan for the first five years with lower and more affordable payments. Many loans offer borrowers lower payments in the beginning of the loan term and higher payments after five or ten years because there is an expectation that the homeowner will have a higher salary in several years and will be able to afford higher payments.

**Claim 48:**

**Cohn** further discloses:

- *subsequent payments comprising the initial payment adjusted one or more times by the growth rate at prespecified intervals during the loan term* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_0$ , over the life of the mortgage) and Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ . To determine the payments, the variables that are needed are as follows: (1)  $R_1$ , which is interest rate; (2)  $g_0$ , which is the growth rate; (3)  $M_0$ , which is the principal; and (4)  $T$ , which is the loan term.)).

**Cohn** does not disclose, but **Kistner**, however, does disclose:

- *constant payments equal to the initial payment for a prespecified period of time* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year.)); and
- *wherein the prespecified period of constant payments is longer than the period between any two payments adjusted by the growth rate and is longer than one year* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kistner's hybrid mortgage with Cohn/Lovell/Admission's. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of combining mortgages in such a way as to allow the borrower to better afford the loan by having a fixed payment loan for the first five years with lower and more affordable payments. Many loans offer borrowers lower payments in the beginning of the loan term and higher payments after five or ten years because there is an expectation that the homeowner will have a higher salary in several years and will be able to afford higher payments.

**Claim 49:**

**Cohn** further discloses:

- *wherein the first code segment receives the growth rate* (see at least Page 409, Paragraph 5 (the payment rises at a fixed rate,  $g_0$ , over the life of the mortgage)).

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the subsequent payments further comprise one or more prespecified secondary adjustments to the growth rate* (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of adjusting the growth rate with changes in inflation with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of having the payments grow at the same rate as inflation to eliminate risk so that the lender does not lose money and the

borrower does not overpay and can afford the payments (see at least Lovell, pages 289-290).

**Claim 50:**

**Cohn** further discloses:

- *wherein the secondary adjustment comprises a lump sum payment at the end of the loan term, the lump sum payment equal to an outstanding principal balance (see at least Page 409, Equation 3 ( $Q_t$  is the payment at time  $t$ , which could be the payment at the end of the term. This equation could be used to solve for any remaining variables, such as the lump sum payment at the end of the loan term.)).*

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the second code section calculates the secondary adjustments (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)).*

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of adjusting the growth rate with changes in inflation with Cohn/Lovell's mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of having the payments grow at the same rate as inflation to eliminate risk so that the lender does not lose money and the borrower does not overpay and can afford the payments (see at least Lovell, pages 289-290).

**Claim 51:**

**Cohn** does not disclose, but **Lovell**, however, does disclose:

- *wherein the second code section calculates the secondary adjustments (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)); and*
- *wherein the secondary adjustment comprises a second stream of...payments that fully amortizes an outstanding principal balance (see at least Pages 289-290 (Payments increase in proportion to inflation rates. The growth rate of the payments changes in accordance with the inflation rates.)).*

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Lovell's method of adjusting the growth rate with Cohn/Lovell's

mortgage. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of adjusting the growth rate and requiring a second set of payments that can be used to pay the balance of the principal. It is possible that the previous set of payments based on the previous growth rate were insufficient to pay off the principal. Furthermore, it is possible that a second stream of payments at the adjusted growth rate could be used to pay the principal in a shorter amount of time than the previously set term of the mortgage. (see at least Lovell, pages 289-290).

Cohn does not disclose, but Kistner, however, does disclose:

- *a second stream of constant payments* (see at least Kistner, page 96, Exhibit 1 and associated text ("Exhibit 1 shows the payment schedule for the first 10 years of a \$100,000 hybrid loan." During the first five years, the monthly payments are fixed. Thereafter, the monthly payments increase each year, so each year has 12 constant payments.));

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Kistner's hybrid mortgage with Cohn/Lovell/Admission's. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of combining mortgages in such a way as to allow the borrower to better afford the loan by having a fixed payment loan for the first five years with lower and more affordable payments. Many loans offer borrowers lower payments in the beginning of the loan term and higher payments after five or ten years because there is an expectation that the homeowner will have a higher salary in several years and will be able to afford higher payments.

### **Conclusion**

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- **Snowden, 1987**, teaches about mortgages.
33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Rosen whose telephone number is 571-270-1850. The examiner can normally be reached on Monday - Friday, 8:30 am-6:00 pm est, alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/  
Primary Examiner, Art Unit 3692